



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/708,766	11/07/2000	James F. Gausling	430672000101	4160
25226	7590	09/30/2005		
MORRISON & FOERSTER LLP 755 PAGE MILL RD PALO ALTO, CA 94304-1018			EXAMINER CRONIN, STEPHEN K	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 09/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/708,766
Filing Date: November 07, 2000
Appellant(s): GAUSLING ET AL.

MAILED

SEP 30 2005

Group 3700

Rick Shoop
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 18, 2005 appealing from the Office action mailed March 23, 2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

Application 10/161,300 which is a continuation of the present application is currently in *ex parte* prosecution. An Appeal Brief was filed in this application on October 1, 2004.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

1) Whether claims 3, 12, 25 and 26 are appropriately rejected under 35 USC 112, first paragraph, as failing to comply with the written description requirement.

2) Whether claims 1, 6, 7, 15 and 17 are appropriately rejected under 35 USC 102(b) as being anticipated by Floyd, Great Britain Patent No. 1400.

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The rejection of claims 3, 12, 25 and 26 under 35 USC 112 second paragraph is hereby withdrawn.

The rejection of claims 1, 3-5 and 15 under 35 USC 102(e) in view of Sizemore 6,130,616 is hereby withdrawn.

The rejection of claims 1-4 and 6-20 under 35 USC 102(e) in view of Clements 6,024,265 is hereby withdrawn.

The rejection of claim 3 under 35 USC 102(e) in view of Floyd Great Britain Patent No. 1400 is hereby withdrawn.

The rejection of claims 1, 3, 6, 7, 10, 14, 15, 17, 18, 21, 22 and 24 under the judicially created doctrine of obviousness-type double patenting as being unpatentable in over claims 1, 14, 16, 18 and 19 of US Patent No. 6,164,509 is hereby withdrawn.

The rejection of claims 4, 5 and 13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable in over claim 1 of US Patent No. 6,164,509 in view of Sizemore 6,130,616 is hereby withdrawn.

NEW GROUND(S) OF REJECTION

Claims 1, 2, 4, 6-11, 13-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Bannister 4,332,379.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bannister 4,332,379 in view of Sizemore 6,130,616.

Claims 1, 6, 7, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Floyd Great Britain Patent No. 1400 in view of Bondy 34,560.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,332,379	BANNISTER	6-1982
GB 1,400	FLOYD	6-1861
34,460	BONDY	3-1862
6,130,616	SIZEMORE	10-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 3, 12, 25 and 26 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. There is no disclosure on how to

Art Unit: 3727

make the backpack seamless and there is insufficient disclosure for the distal ends of the shoulder support members connected to each other.

Claims 1, 2, 4, 6-11, 13-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Bannister 4,332,379.

Bannister teaches a collapsible exercise back pack comprising

A backpack body 14,

A plurality of shoulder support members with proximal and distal ends 46, 48,

Each proximal end connected to the backpack at a first transition region between a top region and an outer region of the backpack body 16, 18,

Side support members 20, 22, each connected at a proximal end to a second transition region between the outer region and the lateral side region and each having a distal end connected to one of the shoulder support members,

The pack is made of Nylon (see column 2 lines 16-18),

The first transition region forms a yoke (see figure 2),

The bottom region of the backpack has increased stiffness due to the addition of a zipper 34,

A hip belt comprising first and second pieces 58, 60, attached to the backpack at first and second lateral side regions of the pack,

The hip belt is adjustable 64,

The first and second shoulder straps are parallel to each other,

The first and second hip belt pieces are parallel to each other and perpendicular to the shoulder straps, and

The shoulder straps and hip belt pieces total four.

Claims 1, 6, 7, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Floyd Great Britain Patent No. 1400.

Floyd discloses an ergonomic backpack comprising:

A backpack body (Figures 1 and 2) comprising a plurality of straps;

A plurality of shoulder support members (c), each member having a distal end (bottom portion) and a proximal end (top portion), each proximal end connected to the backpack body at a first transition region (at buckle) between a top region (d) and an outer region (edge) of the backpack body (Figure 1); and

A yoke (a) disposed along the backpack body top region and connected to each shoulder support member.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bannister 4,332,379 in view of Sizemore 6,130,616.

Bannister teaches the claimed invention except for the claimed fineness of the Nylon set forth in the claim.

Sizemore teaches at column 5, lines 27-28 that it is known to form a backpack from Nylon with a fineness of 1000 denier which is in the range specified by the claim.

To form the Bannister backpack from the well known material for forming backpacks as taught by Sizemore would have been obvious.

Art Unit: 3727

Claims 1, 6, 7, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Floyd Great Britain Patent No. 1400 in view of Bondy 34,560.

Floyd discloses an ergonomic backpack comprising:

A backpack body (Figures 1 and 2) comprising a plurality of straps;

A plurality of shoulder support members (c), each member having a distal end (bottom portion) and a proximal end (top portion), each proximal end connected to the backpack body at a first transition region (at buckle) between a top region (d) and an outer region (edge) of the backpack body (Figure 1); and

A yoke (a) disposed along the backpack body top region and connected to each shoulder support member.

The examiner considers that the shoulder support members are attached in a transition region as set forth in the claims. If however one of ordinary skill in the art would not arrive at this same conclusion, Bondy teaches similar backpack (A) in which the shoulder support members (D) are clearly shown as attached to a transition region between the top region and the outer region of the backpack body (f).

It would have been obvious to modify the backpack of Floyd to have the shoulder support members attached in the manner as taught by Bondy to draw the backpack body close to the shoulders to prevent it from swinging about as set forth in column 2 lines 28-38, since both inventions are directed to improvements in backpacks.

(10) Response to Argument

In response to applicants directed to the rejection of claims 3, 12, 25 and 26 under 35 USC 112, first paragraph, as failing to comply with the written description requirement, the following is submitted.

Applicant must fully disclose the invention which he intends to claim as his invention, which includes a full disclosure of each and every part of his invention and how to make and use his invention.

Claims 3 and 12 set forth that the backpack body comprises a single, seamless continuous member. The only disclosure present in applicants specification on this feature is contained on page 6 lines 5-8 of the specification. It is unclear how a backpack with a body formed from a single, seamless, continuous member could be formed or used. If a backpack body were formed in this manner, there would be no opening for inserting and carrying items. Therefore the pack could not function in the manner as set forth in the background of the specification. Also, a backpack as set forth in the specification and claims must have shoulder support members attached to the pack body. The only disclosure present in applicants specification is to attach the members by seams to the pack body. The pack body now has seams. If applicant has contemplated a different type of means for attachment, this has not been disclosed.

Claims 25 and 26 set forth that the distal ends of the two shoulder support members are connected to each other and provide support for the lower outer region of the backpack body. The examiner can find nothing in the original specification and drawings that support this claimed limitation. It is unclear how attaching the two distal ends of the shoulder support members to each other would provide support to the lower

outer region of the backpack body since applicants has failed to disclose how this is done.

In response to applicants arguments directed to the rejection of claims 1, 6, 7, 15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Floyd Great Britain Patent No. 1400, the examiner submits the following.

Floyd shows in figures 1 and 2 that the proximal ends of the straps are attached to the buckles which are attached by seams to the upper portion of the pack. Given the definition of what encompasses a "region" as set forth on page 7 line 4 through page 8 line 2 of applicants specification and in particular "one may move as many as several inches away from the first juncture 212 into the region of the top side 202", the examiner submits that Floyd teaches this limitation.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid *sua sponte* **dismissal of the appeal** as to the claims subject to the new ground of rejection:

(1) **Reopen prosecution.** Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment,

Art Unit: 3727

affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) **Maintain appeal.** Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,



Stephen Kirk Cronin

Primary Examiner A.U. 3727

Art Unit: 3727

A Technology Center Director or designee must personally approve the new ground(s) of rejection set forth in section (9) above by signing below:



Richard A. Bertsch

Director Technology Center 3700


Conferees;



Nathan Newhouse

Supervisory Primary Examiner

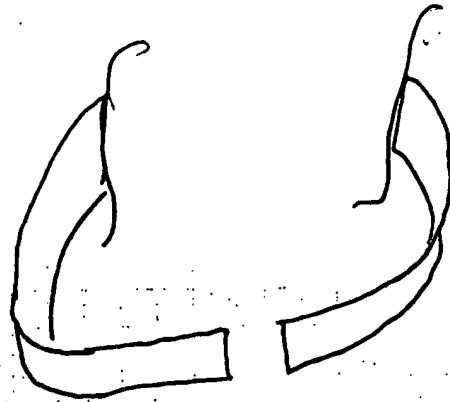
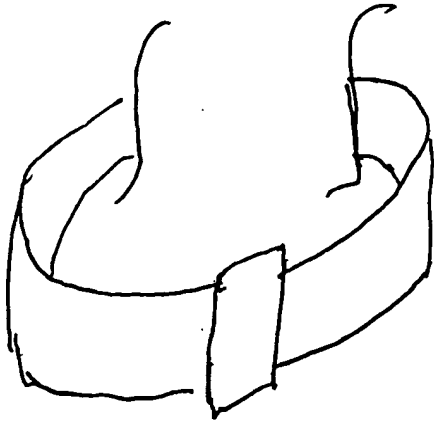
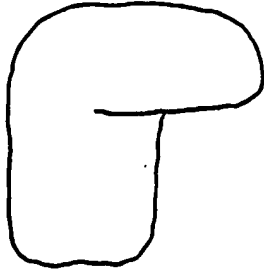
A.U. 3727



Jes. Pascua

Primary Examiner

A.U. 3727



Do Not Enter.
Not Approved on 9/15/05